



State of Wisconsin

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STEPHEN R. MILLER
CHIEF

March 2, 2009

MEMORANDUM

To: Senator Darling

From: Joseph T. Kreye, Sr. Legislative Attorney, (608) 266-2263

Subject: Technical Memorandum to **2009 SB 52** (LRB-0996/1) by **DOR**

We received the attached technical memorandum relating to your bill. This copy is for your information and your file.

If you wish to discuss this memorandum or the necessity of revising your bill or preparing an amendment, please contact me.

MEMORANDUM

February 23, 2009

TO: Joseph Kreye
Legislative Reference Bureau

FROM: Rebecca Boldt
Department of Revenue

SUBJECT: Technical Memorandum on SB 52 (LRB 0996/1) – Education Tax Credit for Businesses

The Department has the following technical concerns with the above-referenced bill:

Sections 71.07(5r)(c)4, 71.28(5r)(c)4, and 71.47(5r)(c)4 provide that a claimant may not claim the credit “for any tuition amounts that the claimant excluded...under section 127 of the Internal Revenue Code.” Section 127, IRC, allows an exclusion from gross income of the employee for amounts paid by the employer for educational assistance, not an exclusion for the employer (claimant). If the author's intent is that the employer cannot claim the credit for educational expenses that are excluded from the taxable income of the employee under IRC section 127, these provisions should be changed to read “... that the individual excluded under section 127...”

Sections 71.07(5r)(b)1 and 2 and (c)1, 71.28(5r)(b)1 and 2 and (c)1, and 71.47(5r)(b)1 and 2 and (c)1 base the credit on the amount “paid or incurred” during the taxable year. The tuition expenses could be incurred in one taxable year but paid in another. This would result in a credit being allowed each year for the same expenses. In order to avoid this, the credit should be based on the amount paid during the taxable year.

The draft provides for a credit equal to 75% of eligible tuition expenses if the individual's taxable income is not more than 185% of the poverty line. This would force the educational institution to require personal information from students about their taxable income, their spouse's income, or their parents' income and to provide the personal information to a third party, the employer. Is this the author's intent?

The language in sections 71.07(5r)(b)2, 71.28(5r)(b)2, and 71.47(5r)(b)2 is not consistent with that in 71.07(5r)(c)2, 71.28(5r)(c)2, and 71.47(5r)(c)2. For purposes of the 75% credit, the taxable income is considered for the year prior to commencing participation in the education program. However, for purposes of the written certification from the postsecondary institution, the taxable income to be reported is for the taxable year in which the tuition is paid. Since it would be unlikely that the postsecondary institution would have financial information available for the current taxable year, we suggest that par. (c)2 be changed to refer to the taxable income for the year prior to the taxable year in which the credit is claimed.

Is it the author's intent that the credit be allowed to nonresidents and part-year residents of Wisconsin? It appears that a nonresident self-employed person who sends their child to a Wisconsin school could claim the credit against any income taxable to Wisconsin even though the self-employment income may not be taxable to Wisconsin. The author may wish to clarify this.

The bill relies on a subjective standard of "satisfactory progress towards completing the ..." The author may wish to use a more objective test such as number of hours enrolled, GPA or actual grades. The author may also consider further clarifying whether the objective test applies to all the courses taken during a particular semester/school year or just the degree-granting related courses (e.g., general education requirements at a university which are not necessarily required by a technical college).

The bill uses the phrase "education program" interchangeably with "degree-granting program" and uses "education program" more often than "degree-granting program" when referring to a qualified education program. The author may wish to replace "degree-granting program" with "education program" in the definition (but keep the same definition) so that the proposed statutory language is consistent throughout.

As written, the "individual" for whom the claimant may pay tuition expenses could be anyone as there is no relationship or scope language. There is only limiting language when it involves the family member of a managing employee. The author could choose to clarify that the "individual" (presumably the student) has to be an employee of the claimant.

The bill provides that the claimant has to certify that it will not be reimbursed for the tuition it paid. Is it permissible for the "individual" to be reimbursed and for the claimant to still receive the credit? The author may wish to change or clarify this.

The proposed statutory language applies to sole proprietorships, but it is unclear whether a sole proprietor who is the only employee of the business could be both the student and the claimant. The author may wish to clarify this.

It is confusing to taxpayers when a credit is effective in taxable years beginning in a month other than January of the calendar year. In this instance, the credit would have to be listed on the forms for tax years beginning on or after January 1, 2009, but would only apply to those taxpayers who file on a fiscal-year basis whose tax year begins on July 1, 2009, or later. It would be preferable to have the credit apply for taxable years beginning on or after January 1, 2009 (or January 1, 2010 if the bill were to be enacted after July 31, 2009). Using an applicability date of taxable years beginning on July 1, 2009, will also be a problem if this bill is enacted late in the year after 2009 forms have been sent to the printer.

If you have any questions regarding this technical memorandum, please contact Michael Oakleaf at 261-5173 or via email at Michael.oakleaf@revenue.wi.gov.

cc: Sen. Darling